

ORACLE USA, INC., ET AL.

V.

RIMINI STREET, INC., ET AL.

CASE No. 2:10-CV-0106-LRH-PAL

**DECLARATION OF ELIZABETH A. DEAN CONCERNING
PREJUDGMENT INTEREST**

**TM FINANCIAL FORENSICS, LLC
NOVEMBER 13, 2015**

I, Elizabeth A. Dean, declare as follows:

1. I am a Vice President of TM Financial Forensics LLC ("TMF"). TMF is a business, economic, financial and damages consulting company that provides services to government agencies, corporations and counsel.
2. I am a Certified Public Accountant ("CPA"), a Certified Management Accountant ("CMA"), a Certified Licensing Professional ("CLP") and Certified in Financial Forensics ("CFF"). I have lectured on commercial damages and intellectual property valuation to accounting and legal industry associations, private companies, law firms and law schools.
3. Prior to joining TMF, I was a Director at Navigant Consulting, Inc. ("NCI"). NCI is an international consulting company. Before joining NCI in February 2004, I was a Vice President and shareholder of Tucker Alan Inc. Tucker Alan Inc. was a business, economic, financial and damages consulting company. Prior to joining Tucker Alan Inc. in 1994, I was employed by Peterson Consulting, an international consulting firm.
4. I have over twenty-five years of experience consulting on financial, accounting, economic, and damages matters, and am experienced in matters related to the scope of my work, analysis and study on this matter. I have consulted on numerous commercial damages matters involving fraud and breach of contract allegations, including software development matters. I have analyzed hundreds of claims for lost profits and other financial and economic impacts. I have consulted on numerous matters involving various types of software, including enterprise resource planning, customer relationship management, human capital management, visual imaging, reference laboratory systems, property tax systems and internet routing software systems. I have qualified to testify as an accounting, damages and valuation expert in United States federal and state courts and various arbitration forums including AAA, JAMS and the Japan Commercial Arbitration Association.

5. At Oracle's request, I have performed a series of calculations to determine the amount of prejudgment interest owed to Oracle based on the October 13, 2015 jury verdict. The jury awarded Oracle International Corporation ("Oracle International") and Oracle America, Inc. ("Oracle America") non-duplicative damages of \$50,027,000, based on findings of copyright infringement and violations of the California Computer Data Access and Fraud Act and the Nevada Computer Crimes Law by Rimini Street.¹ The allocation of the non-duplicative jury award is summarized below in **Table 1**.

TABLE 1: October 13, 2015 Jury Award

Plaintiff	Copyright Damages	Computer Statute Damages	Total
Oracle International	\$35,600,000	\$5,600,000	\$41,200,000
Oracle America	-	\$8,827,000	\$8,827,000
Total	\$35,600,000	\$14,427,000	\$50,027,000

A. Prejudgment Interest on Oracle's Copyright Infringement Award

6. On Oracle's copyright claim, the jury awarded Oracle International \$35,600,000.² At Oracle's request, I have calculated the prejudgment interest owed to Oracle on this amount from October 29, 2006 (which I understand to be on or after the time of first infringement for all the product families at issue in this litigation) through the nine-year period ending October 28, 2015, using the average 1-year constant maturity yield on U.S. Treasury securities for the week prior to October 29, 2006, compounded annually. The weekly average 1-year constant maturity Treasury yield for the week ending October 27, 2006 was 5.07%.³ Using this methodology, I have calculated total prejudgment interest of \$19,959,532 owed to Oracle on its copyright damages award (see **Exhibit A**).

¹ *Oracle USA, Inc., et al. v. Rimini Street, Inc., et al.*, Verdict Form, Questions 6c, 17, 18, 19 and 20.

² *Oracle USA, Inc., et al. v. Rimini Street, Inc., et al.*, Verdict Form, Question 6c.

³ U.S. Treasury securities weekly average 1-year constant maturity yield for the week ending 10/27/2006. [<http://www.federalreserve.gov/releases/h15/20061030/>].

7. At Oracle's request, I have also calculated the prejudgment interest owed to Oracle on the copyright damages award of \$35,600,000 from October 29, 2006 through October 28, 2015, using the bank prime rate immediately prior to October 29, 2006, compounded annually. The bank prime rate for the week ending October 27, 2006 was 8.25%.⁴ Using this methodology, I have calculated total prejudgment interest owed to Oracle on its copyright damages award to be \$37,060,964 (see **Exhibit B**).

B. Prejudgment Interest on Oracle's Computer Statute Claims Award

8. On Oracle's computer statute damages claims, the jury awarded \$5,600,000 to Oracle International and \$8,827,000 to Oracle America. I understand that under California law, the start date for prejudgment interest is set at the point that "a person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day."⁵ I have been instructed that Oracle's damages under the computer statute damages were certain, or made capable of being made certain by calculation, at least from January 17, 2012, the date of my Expert Report in this matter. I understand that California state law sets a fixed rate of 7% simple interest for prejudgment interest in matters where there is no breach of fiduciary duty.⁶
9. At Oracle's request, I have calculated prejudgment interest for the computer statute claims under California law from January 17, 2012 through the four-year period ending January 16, 2016 at an interest rate of 7%. Using this methodology, I have calculated total prejudgment interest owed to Oracle International for computer statute damages under California law as \$1,568,000, and total prejudgment interest owed to Oracle America under California law as \$2,471,560 (see **Exhibit C**).
10. I understand that under Nevada law, the start date for prejudgment interest begins "from the time of the service of the summons."⁷ I have been instructed that the summons was served on January 27, 2010. I understand that under Nevada law, the prejudgment interest rate is set at 2% plus "the prime rate at the largest bank in Nevada as ascertained

⁴ The bank prime rate for the week ending 10/27/2006 [<http://www.federalreserve.gov/releases/h15/20061030/>].

⁵ California Civil Code, §3287(a).

⁶ *Michaelson v. Hamada*, 29 Cal. App. 4th 1566, 1585-86 (2d Dist. 1994); Cal. Const. art. XV § 1.

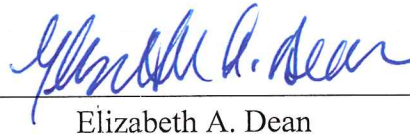
⁷ Nevada Revised Statutes Ann. §17.130.

by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment.”⁸ As of July 1, 2015, the prime rate as determined by the Nevada Commissioner of Financial Institutions was 3.25%.⁹ This results in a prejudgment interest rate of 5.25%.

11. At Oracle’s request, I have calculated prejudgment interest for the computer statute claims under Nevada law from January 27, 2010 through the six-year period ending January 26, 2016 at 5.25% annual simple interest. Using this methodology, I have calculated total prejudgment interest owed to Oracle International for computer statute damages under Nevada law as \$1,764,000, and total prejudgment interest owed to Oracle America under Nevada law as \$2,780,505 (see **Exhibit D**).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 13, 2015, in San Francisco, California.


Elizabeth A. Dean

⁸ Nevada Revised Statutes Ann. §17.130.

⁹ Prime interest rate as of July 1, 2015 as ascertained by the Nevada Commissioner of Financial Institutions [<http://www.fid.state.nv.us/prime/primeinterestrate.pdf>].

Prejudgment Interest - Copyright Damages
1-Year Constant Maturity Treasury Rate, Compounded Annually

Exhibit A

Period Start Date ^[1] Period End Date	10/29/2006 10/28/2007	10/29/2007 10/28/2008	10/29/2008 10/28/2009	10/29/2009 10/28/2010	10/29/2010 10/28/2011	10/29/2011 10/28/2012	10/29/2012 10/28/2013	10/29/2013 10/28/2014	10/29/2014 10/28/2015	Total
Beginning of Period Amount ^[2]	\$ 35,600,000	\$ 37,404,920	\$ 39,301,349	\$ 41,293,927	\$ 43,387,529	\$ 45,587,277	\$ 47,898,552	\$ 50,327,009	\$ 52,878,588	
Interest Rate ^[3]	5.07%	5.07%	5.07%	5.07%	5.07%	5.07%	5.07%	5.07%	5.07%	
Interest	\$ 1,804,920	\$ 1,896,429	\$ 1,992,578	\$ 2,093,602	\$ 2,199,748	\$ 2,311,275	\$ 2,428,457	\$ 2,551,579	\$ 2,680,944	\$ 19,959,532
End of Period Amount	\$ 37,404,920	\$ 39,301,349	\$ 41,293,927	\$ 43,387,529	\$ 45,587,277	\$ 47,898,552	\$ 50,327,009	\$ 52,878,588	\$ 55,559,532	

Notes:

[1] Interest is calculated from the date that infringement began, determined as no later than the beginning of the hypothetical license for Oracle's Database software [Expert Report of Elizabeth Dean, January 17, 2012, ¶1352].

[2] Verdict form, Dkt. No. 896, Question 6c.

[3] U.S. Treasury securities weekly average 1-year constant maturity yield for the week ending 10/27/2006 [<http://www.federalreserve.gov/releases/h15/20061030/>].

Prejudgment Interest - Copyright Damages
Bank Prime Interest Rate, Compounded Annually

Exhibit B

Period Start Date ^[1]	10/29/2006	10/29/2007	10/29/2008	10/29/2009	10/29/2010	10/29/2011	10/29/2012	10/29/2013	10/29/2014	Total
Period End Date	10/28/2007	10/28/2008	10/28/2009	10/28/2010	10/28/2011	10/28/2012	10/28/2013	10/28/2014	10/28/2015	
Beginning of Period Amount ^[2]	\$ 35,600,000	\$ 38,537,000	\$ 41,716,303	\$ 45,157,898	\$ 48,883,425	\$ 52,916,308	\$ 57,281,903	\$ 62,007,660	\$ 67,123,292	
Interest Rate ^[3]	8.25%	8.25%	8.25%	8.25%	8.25%	8.25%	8.25%	8.25%	8.25%	
Interest	\$ 2,937,000	\$ 3,179,303	\$ 3,441,595	\$ 3,725,527	\$ 4,032,883	\$ 4,365,595	\$ 4,725,757	\$ 5,115,632	\$ 5,537,672	\$ 37,060,964
End of Period Amount	\$ 38,537,000	\$ 41,716,303	\$ 45,157,898	\$ 48,883,425	\$ 52,916,308	\$ 57,281,903	\$ 62,007,660	\$ 67,123,292	\$ 72,660,964	

Notes:

[1] Interest is calculated from the date that infringement began, determined as no later than the beginning of the hypothetical license for Oracle's Database software [Expert Report of Elizabeth Dean, January 17, 2012, ¶352].

[2] Verdict form, Dkt. No. 896, Question 6c.

[3] Bank prime rate for the week ending 10/27/2006 [<http://www.federalreserve.gov/releases/h15/20061030/>].

Prejudgment Interest - Computer Statute Damages
California - 7% Simple Interest

Exhibit C

	Oracle		Total
	International	Oracle America	
Computer Statute Damages ^[1]	\$ 5,600,000	\$ 8,827,000	\$ 14,427,000
Starting Date ^[2]	1/17/2012	1/17/2012	
Ending Date	1/16/2016	1/16/2016	
Time Period (in Years)	4	4	
Annual Interest Rate ^[3]	7%	7%	
Total Interest	\$ 1,568,000	\$ 2,471,560	\$ 4,039,560
Total Computer Statute Damages	\$ 7,168,000	\$ 11,298,560	\$ 18,466,560

Notes:

[1] Verdict form, Dkt. No. 896, Questions 17 and 18.

[2] I understand that under California law, prejudgment interest begins at the point that damages are certain, or capable of being made certain by calculation. I have been instructed that Oracle's damages under the computer statute damages were certain, or made capable of being made certain by calculation, at least from January 17, 2012, the date of my Expert Report in this matter.

[3] I understand that California state law sets a fixed rate of 7% simple interest for prejudgment interest in matters where there is no breach of fiduciary duty [*Michaelson v. Hamada*, 29 Cal. App. 4th 1566, 1585-86 (2d Dist. 1994); Cal. Const. art. XV, § 1].

Exhibit D

**Prejudgment Interest - Computer Statute Damages
Nevada - 5.25% Simple Interest**

	Oracle		
	International	Oracle America	Total
Computer Statute Damages ^[1]	\$ 5,600,000	\$ 8,827,000	\$ 14,427,000
Starting Date ^[2]	1/27/2010	1/27/2010	
Ending Date	1/26/2016	1/26/2016	
Time Period (in Years)	6	6	
Annual Interest Rate ^[3]	5.25%	5.25%	
Total Interest	\$ 1,764,000	\$ 2,780,505	\$ 4,544,505
Total Computer Statute Damages	\$ 7,364,000	\$ 11,607,505	\$ 18,971,505

Notes:

[1] Verdict form, Dkt. No. 896, Questions 19 and 20.

[2] I understand that under Nevada law, prejudgment interest begins on the date of the service of the summons. I have been instructed that the summons was served on January 27, 2010.

[3] I understand that under Nevada law, prejudgment interest is calculated at the prime rate as determined by the prime rate reported by the Nevada Commissioner of Financial Institutions immediately preceding the date of judgment, plus 2% [Nevada Revised Statutes Ann. §17.130]. The Nevada bank prime rate as of July 1, 2015, as determined by the Nevada Commissioner of Financial Institutions, was 3.25% [<http://www.fid.state.nv.us/prime/primeinterestrate.pdf>].